INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.R. No. 594 of 1997
Date of decision November 23, 2007

1. Gian Singh cycle wala s/o Sh. Kashmir Singh, near Chathha Rice Mill, Tarn Taran Road, outside Chatwind Gate, Amritsar.

..... Petitioner-tenant

Versus

1. Sukhwinder Kaur d/o S. Harjit Singh.
2. Harmeet Kaur d/o S.Harbans Singh
3. Jit Kaur d/o S. Ram Singh
(All three through their General Attorney S.Jagir Singh s/o S.Amar Singh r/o Property No.1606, Tarn Taran, Road, outside Chatwind Gate. Amritsar).

..... Respondents-landlords

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. B. R. Mahajan, Advocate
for the appellants.

Mr. Premjit Kalia, Advocate
for the respondents.

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Sham Sunder, J.

This revision petition is directed against the order dated 11.12.1996, rendered by the Appellate Authority, Amritsar vide which it dismissed the appeal against the order of ejectment dated 8.12.1995 rendered by the Rent Controller, Amritsar.

2. Jaswinder Kaur was originally the owner-landlady in respect of the demised premises as fully detailed, in the rent petition. She created tenancy, in respect of the demised premises, in favour of the petitioner-tenant on 1.5.1987, at a monthly rental of Rs.54/- vide rent note dated 9.11.1987. Jaswinder Kaur sold the demised premises, in favour of the respondents-landlords. The petitioner-tenant became tenant of the

respondents-landlords, by operation of law. The ejectment of the petitioner-tenant, was sought, on the grounds, that he had neither paid nor tendered the arrears of rent from 1.10.1990 onwards; that he committed such acts as materially impaired the value and utility of the demised premises, and that the demised premises had become unfit and unsafe for human habitation.

3. In the written statement, filed by the petitioner-tenant, the relationship of landlord-tenant was denied. The locus standi of the landlords-respondents in filing the application was challenged. It was admitted that the petitioner was inducted as a tenant by Jaswinder Kaur, in the demised premises. It was stated that he tendered the arrears of rent from 1.10.1990 to 31.7.1992, on the first date of hearing, and, as such, this ground for ejectment did not survive. It was denied that he committed such acts as materially impaired the value and utility of the demised premises. It was also denied that the demised premises had become unfit and unsafe for human habitation.

4. On the pleadings of the parties, the following issued were struck:-

> *"1. Whether there is relationship of landlord and tenant between the parties?OPP*
>
> *2. Whether the applicants have no locus standi to file the present application?OPP*
>
> *3. Whether the sale deed alleged to have been executed in favour of the applicants is a forged and fabricated documents as alleged in the written statement?OPR*
>
> *4. Whether the application is liable to be stayed u/s 10 CPC? OPR*
>
> *5. Whether the tender made by the respondent on the*

first date of hearing is short?OPR

6. Whether the respondent has made such acts which have materially impaired the value and utility of the demised premises?OPA

7. Whether the premises in dispute have become unfit and unsafe for human habitation?OPA

8. Relief."

5. The parties led evidence. After hearing Counsel for the parties, and on going through the evidence, on record, the Rent Controller came to the conclusion that the tender made by the tenant-petitioner, was short by Rs.100/-. It was further held that the remaining grounds of ejectment were not proved. Accordingly, the Rent Controller accepted the application and ordered ejectment of the tenant-petitioner.

6. Aggrieved, against the order of the Rent Controller, an appeal was preferred by the tenant-petitioner, which was dismissed by the Appellate Authority, vide judgment dated 11.12.1996.

7. Dissatisfied, with the judgments of the Rent Controller and the Appellate Authority, referred to hereinbefore, the instant revision petition was filed.

8. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

9. As stated above, the ejectment of the petitioner-tenant was ordered by the Rent Controller only on the ground that the tender made by him was short by Rs.100/-. The appeal against that ejectment order, as stated above, was dismissed by the Appellate Authority. The learned Counsel for the tenant-petitioner, contended that in view of the principle of law laid down in **Rakesh Wadhawan and others Vs. M/s Jagdamba Industrial Corporation and others**, (2002) 5 SCC 440, if the Rent

Controller came to the conclusion, that the tender made by the tenant-petitioner was in any way short, it was required to pass a provisional order, regarding the amount of rent due to the landlord, and afford an opportunity to the tenant-petitioner, to deposit the same, within the specified time, and only on his failure, to do so, ejectment order could be passed. He further contended that the Rent Controller and the Appellate Authority, did not follow the principle of law laid down **in Rakesh Wadhawan's case** (supra). It was further contended by him, that, under these circumstances, the judgments of the Rent Controller, as also of the Appellate Authority, deserved to be set aside, and the case was required to be remanded back, to the Rent Controller, with a direction that he should pass a conditional order in accordance with the law laid down in Rakesh Wadhawan's case (supra) and thereafter afford an opportunity to the tenant to make tender of the amount found to be short or deficient. The contention of the learned Counsel for the petitioner-tenant is correct. The relevant operative portion of the judgment in **Rakesh Wadhawan's case** (supra) is extracted hereunder:-

> *"30 To sum up our conclusion are:*
>
> *(1) In section 13 (2) (i) proviso, the words 'assessed by the controller' qualify not merely the words' the cost of application' but the entire preceding part of the sentenced i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application.*
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> *(2) The proviso to section 13(2) (i) of East Punjab Urban Rent Restriction Act, 1949 casts an obligation on the controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or*

provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the controller so as to satisfy the requirement of the proviso.

3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by controller.

4. On the failure of the tenant to comply nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the controller.

5. If the final adjudication by the controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the controller may pass a conditional order directing tenants to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings."

10. Similar principle of law, was laid down, **in Vinod Kumar Vs.**

Prem Lata, 2003(2) RCR 329. The learned Counsel for the respondents-landlords also conceded that in view, the principle of law laid down in **Rakesh Wadhawan's and Vinod Kumar's cases** (supra) , the case be remanded back to the Rent Controller for passing a conditional order.

11. For the reasons, recorded hereinbefore, the revision petition is accepted. The orders of eviction passed by the Rent Controller vide judgment dated 8.12.1995 and affirmed by the Appellate Authority,vide judgment dated 11.12.1996, are set aside and the case is remanded back with a direction to the successor Court of Smt. Archna Puri, the then Rent Controller, Amritsar to decide the same, afresh, after passing a conditional order, in accordance with the principle of law, laid down in **Rakesh Wadhawan's** and **Vinod Kumar's case** (supra). The parties are directed to appear, in the successor court of the Rent Controller on 17.1.2008.

November 23, 2007 **(SHAM SUNDER)**
archana **JUDGE**